National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 273-1991

February 2, 2007 W-

3089

VISIT <u>WWW.NLRB.GOV</u> FULL TEXT C A S E S S U M M A R I Z E D

Five Star Transportation, Inc.	Agawam, MA	1
Stage Employees Local 769	Chicago, IL	2
Teamsters Local 75 (Schreiber Foods)	Green Bay, WI	2

CONTENTS

<u>List of Decisions of Administrative Law Judges</u>	4
Test of Certification Case	Δ
16st of Coldification Cusc	'
<u>List of Unpublished Board Decisions and Orders in Representation Cases</u>	4
 Contested Reports of Regional Directors and Hearing Officers 	
 Uncontested Reports of Regional Directors and Hearing Officers 	
 Requests for Review of Regional Directors' Decisions and Directions 	
of Elections and Decisions and Orders	
Miscellaneous Board Orders	

The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information and is available on a paid subscription basis. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board. The case summaries constitute no part of the opinions of the Board. The Division of Information has prepared them for the convenience of subscribers.

If you desire the full text of decisions summarized in the Weekly Summary, you can access them on the NLRB's Web site (<u>www.nlrb.gov</u>). Persons who do not have an Internet connection can request a limited number of copies of decisions by writing the Information Division, 1099 14th Street, NW, Suite 9400, Washington, DC 20570 or fax your request to 202/273-1789. As of August 1, 2003, Admin6istrative Law Judge decisions are on the Web site.

All inquiries regarding subscriptions to this publication should be directed to the Superintendent of Documents, U. S. Government Printing Office, Washington, DC 20402, 202/512-1800. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

Five Star Transportation, Inc. (1-CA-41158; 349 NLRB No. 8) Agawam, MA Jan. 22, 2007. Chairman Battista and Member Schaumber found that the Respondent, which entered into a new contract to provide school bus transportation services to the Belchertown School District, violated Section 8(a)(1) of the Act by refusing to hire six of 11 bus drivers who worked for its predecessor First Student, Inc. and who sent individual letters to the Belchertown school committee urging the committee to retain First Student as the contract provider. Member Liebman, concurring in part and dissenting in part, would find that the Respondent unlawfully refused to hire all 11 driver-applicants. [HTML] [PDF]

The Board agreed with the administrative law judge that all 11 drivers engaged in concerted activity by preparing and submitting individual letters to the school committee. Chairman Battista and Member Schaumber found however that only six of the drivers had engaged in protected activity because their letters primarily raised their common employment-related concerns. They concluded that the remaining five drivers' conduct was unprotected because two of the drivers' concerns were limited to a discussion of generalized safety concerns, as opposed to the drivers' common employment-related concerns, and that the other three drivers' letters disparaged the Respondent's business reputation. In light of their finding that only six of the drivers were unlawfully denied employment, Chairman Battista and Member Schaumber reversed the judge's findings that Food and Commercial Workers Local 1459 had majority status among the Respondent's drivers and that the Respondent was a successor employer to First Student. The judge found that, but for the unlawful refusal to hire the discriminatees, 11 of the Respondent's 20 regular drivers and two of its three "spare" drivers would have been former First Student employees.

Member Liebman, in finding that the Respondent unlawfully refused to hire all 11 drivers, said viewing each discriminatee's letter in isolation is "a mistake." She noted that the letters were all part of a concerted letter-writing campaign arising out of a labor dispute and that the Respondent concertedly acted against the driver-applicants on that general basis and not based on the particular content of the individual letters. The majority also erred in its analysis of the five drivers' individual letters, Member Liebman concluded, saying: "The letters of two drivers raised safety concerns that necessarily implicated their own terms and conditions of employment. The letters of the remaining three drivers did not, in fact, amount to unprotected 'disparagement.'" She found that 17 of Five Star's drivers (the eleven drivers at issue and the six who were hired) would have been former employees of First Student, a number sufficient to make Five Star a successor employer, required to recognize the Union and that the Respondent violated Section 8(a)(5) by refusing to do so.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Food and Commercial Workers Local 1459; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Springfield, April 20-22, 204. Adm. Law Judge Arthur J. Amchan issued his decision June 23, 2004.

Stage Employees Local 769, IATSE (13-CB-18033; 349 NLRB No. 12) Chicago, IL Jan. 26, 2007. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(b)(1)(A) and 8(b)(2) of the Act by failing and refusing to refer Charging Party Tania Traynor for employment. The Board found, as did the judge, that the Respondent acted in a discriminatory and arbitrary manner in the operation of its exclusive hiring hall by suspending Traynor because she challenged the authority of the Respondent's executive board. [HTML] [PDF]

(Chairman Battista and Members Liebman and Kirsanow participated.)

Charge filed by Tania Traynor, an individual; complaint alleged violation of Section 8(b)(1)(A) and 8(b)(2). Hearing at Chicago on Nov. 1, 2005. Adm. Law Judge Bruce D. Rosenstein issued his decision Jan. 6, 2006.

Teamsters Local 75 (Schreiber Foods) (30-CB-3077; 349 NLRB No. 14) Green Bay, WI Jan. 26, 2007. The Board affirmed the administrative law judge's supplemental decision to the extent that it holds that the Respondent Union did not unlawfully charge the Charging Party objectors (bargaining unit employees who are nonmembers of the Respondent) for expenses incurred in organizing employees working in the public sector. [HTML] [PDF]

Chairman Battista and Member Schaumber, with Member Liebman dissenting, reversed the judge and held that the Respondent violated Section 8(b)(1)(A) of the Act and its duty of fair representation by charging the Charging Parties for expenses incurred organizing the employees of other employers within the dairy and cheese processing industry, which is the competitive market of Schreiber Foods, or the Charging Parties' employer. The majority held, contrary to the judge, that the Respondent failed to present sufficient evidence to support a finding under *Food & Commercial Workers Locals 951, 7, & 1036 (Meijer, Inc.)*, 329 NLRB 730 (1999), that its organizing expenses are chargeable to objectors because they are germane to its role as collective-bargaining representative and ultimately inure to the benefit of the objectors' bargaining unit.

In *Meijer*, the Board held that the evidence presented by the unions established that the expenses they incurred in organizing employees employed in the retail grocery business in the same metropolitan area ("the same competitive market") as the bargaining unit employees were lawfully charged to the objectors. In so holding, the Board found that the testimony of experts in the field of economics and the direct observations and experience of the union representatives, established a clear linkage between organizing in the retail grocery business in the same metropolitan area and wages for employees in the bargaining units at issue in *Meijer*.

Chairman Battista and Member Schaumber wrote in this supplemental decision:

In our view, then, *Meijer* permits a union to demonstrate, as the unions did in *Meijer* for the highly competitive retail grocery business located in the same metropolitan area, that 'there is a direct, positive relationship between the wage levels of union-represented employees and the level of organization of employees of employers in the same competitive market.' Id. If this same showing is made under analogous factual settings, then under *Meijer* the union may lawfully charge objectors for organizing expenditures.

In the instant case, the evidence advanced by the Respondent failed to meet the standard set in *Meijer*.

Member Schaumber, dissenting in part, believes that *Meijer* was wrongly decided. In the absence of a Board majority to overrule *Meijer*, he recognized it as controlling Board law and joined Chairman Battista in the application to this case. Member Schaumber said the Board failed to address the broader and recurring question, one specifically raised and briefed by the parties, namely, whether such expenses are *ever* properly chargeable to *Beck* objectors. He noted that the issue was previously considered and erroneously decided by a divided Board in *Meijer*, a decision "repeatedly criticized by other Board members as utterly inconsistent with Supreme Court precedent." Member Schaumber believes his colleagues compounded the error by finding it unnecessary to pass on the judge's unprecedented and unwarranted extension of *Meijer* in this case. He would reach and address both issues.

Member Liebman, in her partial dissent, found that the Union acted lawfully in charging the objectors their fair share of the Union's expenses in organizing employees of Schreiber's competitors. She said that her colleagues, in finding to the contrary, hold "in effect, that no matter how much theoretical and empirical evidence has been introduced showing that increased union organizing helps to increase and protect union wage rates, no union may charge *Beck* objectors for such expenses unless it hires a labor economist to prove that such a relationship exists in the particular industry in which the union is the objectors' bargaining agent." Member Liebman believes her colleagues reached their result "despite controlling Board and court precedent to the contrary, and on a theory that is at odds with accepted economic theory, empirical evidence, practical experience, and common sense."

(Chairman Battista and Members Liebman and Schaumber participated.)

Hearing held at Milwaukee on Oct. 10, 2001. Adm. Law Judge Joel P. Biblowitz issued his supplemental decision Dec. 12, 2001.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Disneyland Resort, Division of Walt Disney Co., et al. (Independent Employees Service Association) Anaheim, CA Jan. 24, 2007. 21-CA-37243; JD(SF)-02-07, Judge William G. Kocol.

Lauren Engineers & Constructors, Inc. (Individuals) Erwin, TN Jan. 24, 2007. 10-CA-36395, 36396; JD(ATL)-02-07, Judge George Carson II.

Advanced Architectural Metals, Inc., and its alter egos Advanced Metals, Inc. and Steel Specialties Unlimited, a Single Employer (Carpenters Local 1780) Las Vegas, NV Jan. 26, 2007. 28-CA-20730, et al.; JD(SF)-01-07, Judge Joseph Gontram.

Erie Brush & Manufacturing Corp. (Service Employees Local 1) Chicago, IL Jan. 26, 2007. 13-CA-43530-1; JD-5-07, Judge Arthur J. Amchan.

TEST OF CERTIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment on the grounds that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding.)

Pace University (New York State United Teachers/ American Federation of Teachers) (2-CA-37884; 349 NLRB No. 10) New York, NY January 22, 2007. [HTML] [PDF]

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

DECISION AND ORDER REMANDING [proceeding to Regional Director for further appropriate action]

Pacific Coast Industries, Inc., Tracy, CA, 32-RC-5443, Jan. 24, 2007 (Members Liebman, Schaumber, and Kirsanow) South Jersey Healthcare, Bridgeton, NJ, 4-RC-21179, Jan. 25, 2007 (Members Schaumber and Kirsanow; Member Liebman dissenting in part)

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Ampco System Parking, Wichita, KS, 17-RC-12456, Jan. 23, 2007 (Members Liebman, Schaumber, and Kirsanow)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Baer Glass, Inc., Peoria, IL, 33-RD-870, Jan. 23, 2007 (Members Liebman, Schaumber, and Kirsanow)

DECISION AND DIRECTION [that Regional Director open and count ballots]

MCS Consultants, Inc., Long Island City, NY, 29-RC-11339, Jan. 23, 2007 (Members Liebman, Schaumber, and Kirsanow)

(In the following cases, the Board granted requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Tecumseh Packing Solutions, Inc., Tecumseh, MI, 7-RD-3544, Jan. 25, 2007 (Members Schaumber and Kirsanow; Member Liebman dissenting) [remanding to Regional Director]

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Heritage Village Master Association, Inc., Southbury, CT, 34-RC-2197, Jan. 24, 2007 (Members Liebman and Kirsanow; Member Schaumber dissenting in part)

Lawton Printing, Inc., Spokane, WA, 19-UC-740, Jan. 24, 2007 (Members Liebman, Schaumber, and Kirsanow) Harrison Associates, Somerset, NJ, 22-RC-12735, Jan. 24, 2007

(Members Liebman, Schaumber, and Kirsanow)

Miscellaneous Board Orders

ORDER [granting Employer's request to withdraw its objections and remanding proceeding to Regional Director]

Seven-Up/RC Bottling, Buena Park, Vernon, Orange and San Fernando, CA, 21-RC-20881, Jan. 23, 2007
